

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUPERIOR COAL COMPANY

and

Case 18--CA--9814

INTERNATIONAL UNION OF
UNITED MINE WORKERS OF AMERICA

SUPPLEMENTAL DECISION AND ORDER

By Members Devaney, Oviatt, and Raudabaugh
On June 15, 1989, the National Labor Relations Board ordered¹ the

Respondent, inter alia, to make whole 11 named discriminatees for their losses resulting from the Respondent's violation of Section 8(a)(3) and (1) of the Act. The Board's Order was subsequently enforced by the United States Court of Appeals for the Eighth Circuit on May 4, 1990.²

On July 6, the compliance officer for Region 18 wrote to the Respondent requesting information as to the Respondent's financial situation and its alleged inability to satisfy its backpay obligation.³

On July 30, the Regional Director for Region 18 issued a compliance specification and notice of hearing in this case which alleged the amounts of

¹ 295 NLRB No. 51.

² No. 90--1432, unpublished. All dates hereafter are 1990.

³ In this letter the compliance officer referred to two earlier letters he had sent to the Respondent, on May 17 and June 11, which also requested information regarding the Respondent's financial condition. According to the compliance officer's July letter, he received a letter June 15 from LaDonna Fechtling, on behalf of the Respondent, referring him to an auditor named Steven Givens. Givens advised the compliance officer that he was never retained to do an audit or prepare a financial statement for the Respondent and was unable to supply any information about the Respondent's financial situation.

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backpay due. The compliance specification, which was duly served on the Respondent, directed the Respondent to file an answer within 21 days of service pursuant to the requirements of Section 102.54⁴ of the Board's Rules and Regulations.⁵

On August 21, counsel for the General Counsel notified the Respondent by letter that it had failed to file an answer to the compliance specification and that an answer was required. The letter included a copy of Section 102.54 through 102.56 of the Board's Rules. The letter stated that Respondent would be given "a second opportunity to file an answer," which was due by close of business on August 30. The letter also stated that a Motion for Default Summary Judgment would be filed if no answer was received.

On August 27, the Regional Director received from the Respondent a letter dated August 23 which included two attachments. The two attachments were an August 23 letter addressed to the Region 18 compliance officer disclosing the Respondent's financial condition and a copy of a settlement agreement the Respondent had reached with a company called Big D Mining.

In the cover letter, the Respondent stated that it had "already consented to a [sic] order and judgment," had "no money to pay any judgment," and had "not operated for 3 years and ha[d] no intention to ever operate in the future."

In the August 23 letter to the compliance officer the Respondent stated:

⁴ The Regional Director cited the applicable section as Sec. 102.54, using the Board's 1988 revised Rules and Regulations. Sec. 102.54 was revised and renumbered as Sec. 102.56 in March 1989.

⁵ The compliance specification further provided that "[t]o the extent that such Answer fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them."

In answer to letter dated July 6, 1990, Superior Coal Company would answer the following:

- 1) No tax return filed
 - 2) No tax audit underway for Superior Coal Company or any tax liens filed
 - 3) Contract with Big D is enclosed
- Big D and Superior Coal Company have settled their differences by the following terms:
Superior Coal assists Big D in transfer of Superior #2(A) permit to Big D.

Big D takes possession of Superior Coal equipment in settlement of damages awarded to Big D.

Superior Coal Company has no assets as of this date and therefore has no ability to pay any judgment [sic].

The Respondent's August 23 letters do not refer to counsel for the General Counsel's August 21 letter nor do they assert that they constitute the Respondent's answer to the compliance specification.

On October 22, the General Counsel filed with the Board a Motion for Default Summary Judgment with supporting memorandum and exhibits. The motion states that the Respondent has failed and refused to file an answer to the compliance specification. Alternatively, the motion states that if the Respondent's August 23 letters are to be considered as an answer to the compliance specification, then they do not meet the requirements for an answer under the Board's Rules and Regulations.

On October 24, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on Motion for Default Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations state, in pertinent part:

(b) Contents of answer to specification.---The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. . . . As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.---If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

We agree with the General Counsel that the Respondent's August 23 letters and attachments do not constitute an answer within the meaning of the Board's Rules and Regulations.⁶ Thus, contrary to the requirements of the Rules, the Respondent's letters do not fairly meet the substance of the allegations of the Region's compliance specification, and do not set forth in detail any alternative computations nor adequately explain the Respondent's failure to do

⁶ As noted above, the Regional Director cited the applicable section as 102.54, using the Board's 1988 revised Rules and Regulations. Sec. 102.54 was revised and renumbered as Sec. 102.56 in March 1989. The two sections are substantially the same and, in any event, as the Respondent failed to file an answer that satisfies either section's requirements, this error was not prejudicial.

so. See, e.g., Challenge-Cook Bros., 295 NLRB No. 50, slip op. at 8 (June 15, 1989); Sneva's Rent-A-Car, 270 NLRB 1316, 1317 (1984).

Additionally, we find that the Respondent's alleged inability to fund its backpay liability is not a sufficient response to a compliance specification. It is well settled that the issue in a backpay proceeding is the amount due and not a respondent's ability to pay. Scotch & Sirloin Restaurant, 287 NLRB 1318, 1320 (1988).

Accordingly, the Board finds that the allegations in the compliance specification are true and grants the General Counsel's unopposed Motion for Default Summary Judgment.

ORDER

The National Labor Relations Board orders that the Respondent, Superior Coal Company, Lovilia, Iowa, its officers, agents, successors, and assigns, shall make whole the following discriminatees by paying them the amounts detailed in the compliance specification, plus interest accrued to date of payment, minus tax withholdings required by law: Michael S. Bingham-McGlothlen, Dennis J. Bregar, Robert A. Carr, James C. Deeringer, Eugene C. Fry, Rick L. Fry, Jon R. McCarty, Norman E. Nupp, T. Kyle Pettyjohn, Norman D.

